

ORDER SHEET  
IN THE HIGH COURT OF SINDH, KARACHI

**Suit No.452 of 1996**

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Date	Order with Signature of Judge
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Present: **Mr. Justice Nazar Akbar**

Plaintiff	:	Nisar Ahmed Rahmani, (Nemo)
Defendant No.1	:	M/s. Schon Group
Defendant No.2	:	M/s. National Fibers Limited,
Defendant No.3	:	S. Tahir Hussain
Defendant No.4	:	Nasir Hussain,
Defendant No.5	:	Captain S. H. Ather,
Defendant No.6	:	Jamila Ather
Defendant No.7	:	Farah Nasir Husain,
Defendant No.8	:	Professor Korkut Ozal,
Defendant No.9	:	Dr. Muhammad Yousuf,
Defendant No.10	:	Naveed Ahmed
Defendant No.11	:	The Chairman, Federal Chemical & Ceramics Corporation Ltd.
Defendant No.12	:	Privatization Commission,

Mr. Khalid Mehmood Siddiqui, advocate  
for Defendants No.3 to 7.

Date of hearing : 20.12.2017

Decided on : 20.12.2017

**JUDGMENT**

**NAZAR AKBAR, J.** Plaintiff has filed this suit on **11.4.1996** for Declaration, Recovery of Legal Dues and Damages against the defendants.

2. Brief facts of the case are that the plaintiff was employee of defendant No.2. Defendant No.1 from defendant No.11 through defendant No.12 has acquired ownership of defendant No.2. Defendants No.3 to 7 are Directors and defendants 8 to 10 are on Board of Directors of defendant No.2. Defendant No.1 purchased 21,618,339 shares of the face value of Rs.10/- each in the capital

of defendant No.2 from defendant No.11, for a total consideration of Rs.756,641,900.00 on payment of a sum of Rs.**196,726,894.00** leaving balance of Rs.559,815,006.00 in terms of agreement dated **02.02.1992**.

3. It is averred that at the time of taking over National Fibers Limited (NFL) (defendant No.2) by Schon Group from Federal Chemical and Ceramics Corporation Limited (FCCCL) (defendant No.11) through Privatization Commission (defendant No.12) by an agreement dated **2.2.1992**, the plaintiff was working as Sr. Manager Material Management and Senior Managing Administration and Personnel in Grade E-V at maximum of his pay in this grade and he was entitled to promotion to the post of General Manager. In addition to his duties as Senior Manager Material Management, the plaintiff was also performing duties of Senior Manager Administration and Personnel by Order No.NFL-MD dated **8.10.1988**. It is averred that no sooner the information and irregularities were brought to the knowledge of defendant No.1 to 7, the plaintiff was black-listed and was threatened of dire consequences and was forced to resign and on his refusal to do so, his services were terminated by order No.NFL/EDAP/PP/2021/95 dated **18.10.1995** on flimsy grounds which are illegal and unlawful. The plaintiff sent legal notice dated **27.12.1995** to defendants No.1 to 10 alleging that the services of the plaintiff have been terminated with malafide intentions as he has detected certain irregularities and fraudulent acts and had brought the same in the knowledge of the Management. It is further averred that defendants No.1 to 10 have failed to pay to the plaintiff the sum of Rs.30,93,434.00 which was found due and payable by the

defendants to the plaintiffs after adjustment of a sum of Rs.3,82,066.00 deposited by defendant No.2 in the plaintiff's Bank Account No.488, with United Bank Limited, Korangi Industrial Area, Karachi, without informing the plaintiff which came to his knowledge through the reply of legal notice from defendant No.2 on **09.01.1996**. The Plaintiff, therefore, filed the instant suit and prayed for the following relief(s):-

- a) *Decree for declaration that the plaintiff's services have been terminated illegally and unlawfully with malafide intentions;*
- b) *Decree for declaration that Defendants are liable to pay to the plaintiff a sum of Rs.12,73,500.00 on account of his legal dues payable to him on his retirement;*
- c) *Decree in the sum of Rs.8,91,434.00 against the defendants in favour of the plaintiff being the balance of his legal dues;*
- d) *Decree for damages in the sum of Rs.22,00,000.00 against the defendants in favour of the plaintiff on account of loss of 2.5 years services, mental torture, agony and defamation;*
- e) *Costs of the suit;*
- f) *Any other relief or reliefs which this Hon'ble Court may deem fit and proper in the circumstances of the case.*

4. Defendant No.2 to 7 had filed written statement wherein they denied all the claim of the plaintiff and raised the preliminary objections as under:-

- a. *That the suit is misconceived, untenable, frivolous, malafide, incompetent and is not maintainable.*
- b. *That no cause of action whatsoever has accrued to the plaintiff for the present suit.*
- c. *That the suit is bad for misjoinder of Defendant Nos.1 and 3 to 12.*
- d. *That the contents of the plant are incorrect, vexatious, extraneous, irrelevant, misleading,*

*defamatory, scandalous and contemptuous and are liable to be expunged/struck out.*

*e. That the plaintiff has come to this Hon'ble Court with unclean hands and is not entitled to any relief whatsoever.*

*f. That the present suit is merely an attempt by the plaintiff to coerce, intimidate and pressurize the defendants into paying to him his unlawful, unjustified, unfounded, baseless, bogus and ludicrous claim. Nothing is due and payable by the defendants to the Plaintiff at all.*

It is also contended that the so called "SCHON GROUP" is not a legal and / or a separate entity. The term/nomenclature has been used in the agreement merely to mean and represents the present directors of defendant No.2 being defendants No.3 to 7. It is further denied that the Plaintiff was entitled to promotion to the post of General Manager and Plaintiff has worked with Bale Dispatch and Excise Department of defendant No.2. It is averred that the plaintiff was only appointed attorney for the purposes of signing the relevant excise documents in the absence of the concerned / appropriate officers and attorneys only. At the time of his termination the plaintiff was performing his duties as a Senior Manager Administration. It is also averred that the various allegations/insinuations as stated to have been made by the Plaintiff in a meeting are incorrect.

5. This Court from pleadings of the parties on **01.5.2000** had framed the following issues.

1. *Whether the suit is not maintainable in law?*
2. *Whether the suit is bad for misjoinder of defendants?*
3. *Whether termination of services of the plaintiff was illegal or mala fide?*

4. *Whether the plaintiff is entitled to recover any amount from the Defendants/employer as his legal dues; if so, how much?*
5. *Whether the defendants, or any of them, are liable to pay damages to Plaintiff; if so, how much?*
6. *What should the decree be?*

6. The Plaintiff appeared in witness box. His examination-in-chief and cross was recorded and on behalf of Defendants' attorney namely Rais Asghar appeared in the witness box whose examination-in-chief was recorded but cross was 'Nil' as no one from the plaintiff side turned up to cross examine him. My findings on the above issues with reasons are as under:-

**Issues No.1 and 2**

7. The burden of issue No.1 and 2 is on the defendants and they have dropped both these issues since the suit is already fixed for final arguments. Even otherwise, the suit is filed by an employee on his termination questioning the grounds of termination as malafide, therefore, the suit is maintainable. An employee can sue for the recovery of his dues from the employer and in this case the plaintiff is an employee and one of the defendants was his employer. The issue of joinder and non-joinder of parties is not fatal to the determination of controversy between the parties, therefore, both the issues are disposed of accordingly.

**Issues No.3, 4 and 5.**

8. The burden of proof of these issues is on the plaintiff to show that how the termination of service (Ex:P/26) by his employer on the ground mentioned in the termination letter was illegal and malafide since he has been paid three months' salary in lieu of notice period. The plaintiff has examined only himself and he has

produced several documents but he has not produced any document regarding terms and conditions of his service and particularly the method and manner in which the services of the plaintiff could be terminated by the defendant. After recording his evidence before the Commissioner on **14.3.2010** he has never turned up nor his counsel has come forward to even cross examine the witness of the defendants. The Court provided several opportunities to the counsel for the plaintiff who remained absent on several dates and ultimately evidence of defendant was recorded on **2.12.2016** and even again an intimation notice was sent to the counsel for the plaintiff and to the plaintiff direct but nobody has turned up for and on behalf of the plaintiffs.

9. Mr. Khalid Mehmood Siddiqui, Advocate for the defendant has contended that there is hardly any evidence against the defendants to justify uncalled for claim raised by the plaintiff as an employee on his termination. Whatever claim has been setup by the plaintiff in the plaint and affidavit in evidence was required to be supported by some rules and regulations to justify the same. It has not been denied by the plaintiff that his services were terminated on payment of three months' salary which was the only condition for termination of the eservice.

10. I have also gone through the record. In letters of re-designation, confirmation and promotions filed by the plaintiff in his evidence as Ex:P/14, P/15 and P/18 etc, it has been reiterated in each letter by the management that "*other terms and conditions of employment, however, will remain unchanged*".

11. In view of the above evidence, the plaintiff has failed to establish any illegality or malafide on the part of the defendants in termination of his services by the defendants and as well as his entitlement to claim any dues and/or damages, therefore, Issues No.3 and 4 are decided in negative. In consequence no damage has been caused to the plaintiff by the defendants and, therefore, issue No.5 is also decided in negative.

**Issue No.6.**

12. In view of the above facts and discussion, the suit of the plaintiff was dismissed by short order dated 20.12.2017 with no orders as to cost and the above are the reasons for the same.

J U D G E